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In re Patent No. 6,838,106	:	DECISION ON
Kumamoto, et al.	:	PATENT TERM ADJUSTMENT
Issue Date: January 4, 2005	:	AND NOTICE OF INTENT
Application No. 10/006,137	:	TO ISSUE
Filed: December 10, 2001	:	CERTIFICATE OF
Attorney Docket No. Q67421	:	CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705", filed March 3, 2005. Patentees request that the patent term adjustment indicated on the patent be corrected from one hundred eight-eight (188) days to two hundred thirty-three (233) days.

The request is GRANTED to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **two hundred thirty-five (235) days**.

On January 4, 2005, the above-identified application matured into U.S. Patent No. 6,838,106. The instant request for reconsideration filed March 3, 2005 was timely filed within two months of the date the patent issued. The Patent issued with a Patent Term Adjustment of one hundred eight-eight (188) days. Patentees state that they should not have been assessed applicant delay of forty-five (45) days<sup>1</sup> for the

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<sup>1</sup> The Office assessed applicant delay of forty-seven (47) days for the IDS submission, not forty-five (45) days.

submission of an IDS after the mailing of the Notice of Allowance, because the IDS was a duplicate submission of an IDS previously filed.

Under the circumstances of this case, it is concluded that the filing of applicants' IDS is not a failure to engage under 37 C.F.R. § 1.704(c)(10). A review of the record reveals that applicants previously submitted an IDS on March 24, 2004 and May 19, 2004. However, the Notice of Allowance mailed on June 3, 2004, did not include an initialed IDS. Applicant filed the request for an initialed IDS on July 12, 2004. This was the first opportunity for applicants to make the request for the initialed copy of the IDS filed May 19, 2004. Accordingly, the assessment of forty-seven (47) days of applicant delay with respect to this filing is not warranted.

In view thereof, the correct determination of PTA at the time of issuance is **two hundred thirty-five (235)** days (235 days of PTO delay and 0 days of applicant day).

Receipt of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **two hundred thirty-five (235)** days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

*Key Attn:*  
*spc*  
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Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enc: draft certificate of correction